

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 586

Short Title: Proh't Comp. Pooling/Rqr. Surf. Owner's Cons. (Public)

Sponsors: Representative Holloway (Primary Sponsor).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Environment, if favorable, Rules, Calendar, and Operations of the House.

April 6, 2015

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE STATE FROM REQUIRING PERSONS WITH OIL OR GAS RIGHTS TO INVOLUNTARILY INTEGRATE THEIR INTERESTS IN A DRILLING UNIT AND TO GENERALLY REQUIRE A SURFACE OWNER'S CONSENT FOR OPERATIONS OR DISTURBANCES TO THE SURFACE OF THE LAND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-393 reads as rewritten:

"§ 113-393. **Development of lands as drilling unit by ~~agreement or order of Commission agreement.~~**

(a) Integration of Interests and Shares in Drilling Unit. – When two or more separately owned tracts of land are embraced within an established drilling unit, the owners thereof may agree validly to integrate their interests and to develop their lands as a drilling unit. ~~Where, however, such owners have not agreed to integrate their interests, the Commission shall, for the prevention of waste or to avoid drilling of unnecessary wells, require such owners to do so and to develop their lands as a drilling unit. All orders requiring such integration shall be made after notice and hearing, and shall be upon terms and conditions that are just and reasonable, and will afford to the owner of each tract the opportunity to recover or receive his just and equitable share of the oil and gas in the pool without unnecessary expense, and will prevent or minimize reasonably avoidable drainage from each developed unit which is not equalized by counter drainage. The portion of the production allocated to the owner of each tract included in a drilling unit formed by an integration order shall, when produced, be considered as if it had been produced from such tract by a well drilled thereon. The Commission shall not require the owner or lessor of subsurface oil or gas resources to integrate their interest with another owner's interest or require extraction of that resource.~~

~~In the event such integration is required, and provided also that after due notice to all the owners of tracts within such drilling unit of the creation of such drilling unit, and provided further that the Commission has received no protest thereto, or request for hearing thereon, whether or not 10 days have elapsed after notice has been given of the creation of the drilling unit, the~~ An operator designated by the Commission to develop and operate ~~the~~ a voluntarily integrated unit shall have the right to charge to each other interested owner the actual expenditures required for such purpose not in excess of what are reasonable, including a reasonable charge for supervision, and the operator shall have the right to receive the first production from the well drilled by him thereon, which otherwise would be delivered or paid to the other parties jointly interested in the drilling of the well, so that the amount due by each of them for his shares of the expense of drilling, equipping, and operating the well may be paid to



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1 the operator of the well out of production; with the value of the production calculated at the
2 market price in the field at the time such production is received by the operator or placed to his
3 credit. After being reimbursed for the actual expenditures for drilling and equipping and
4 operating expenses incurred during the drilling operations and until the operator is reimbursed,
5 the operator shall thereafter pay to the owner of each tract within the pool his ratable share of
6 the production calculated at the market price in the field at the time of such production less the
7 reasonable expense of operating the well. In the event of any dispute relative to such costs, the
8 Commission shall determine the proper costs.

9 (b) When Each Owner May Drill. – Should the owners of separate tracts embraced
10 within a drilling unit fail to agree upon the integration of the tracts and the drilling of a well on
11 the unit, ~~and should it be established that the Commission is without authority to require~~
12 ~~integration as provided for in subsection (a) of this section, then,~~ subject to all other applicable
13 provisions of this law, the owner of each tract embraced within the drilling unit may drill on his
14 tract, but the allowable production from each tract shall be such proportion of the allowable for
15 the full drilling unit as the area of such separately owned tract bears to the full drilling unit.

16 (c) Cooperative Development Not in Restraint of Trade. – Agreements made in the
17 interests of conservation of oil or gas, or both, or for the prevention of waste, between and
18 among owners or operators, or both, owning separate holdings in the same oil or gas pool, or in
19 any area that appears from geological or other data to be underlaid by a common accumulation
20 of oil or gas, or both, or between and among such owners or operators, or both, and royalty
21 owners therein, of a pool or area, or any part thereof, as a unit for establishing and carrying out
22 a plan for the cooperative development and operation thereof, when such agreements are
23 approved by the Commission, are hereby authorized and shall not be held or construed to
24 violate any of the statutes of this State relating to trusts, monopolies, or contracts and
25 combinations in restraining of trade.

26 (d) Variation from Vertical. – Whenever the Department fixes the location of any well
27 or wells on the surface, the point at which the maximum penetration of such wells into the
28 producing formation is reached shall not unreasonably vary from the vertical drawn from the
29 center of the hole at the surface, provided, that the Commission shall prescribe rules and the
30 Department shall prescribe orders governing the reasonableness of such variation. This
31 subsection shall not apply to wells drilled for the purpose of exploration or development of
32 natural gas through use of horizontal drilling in conjunction with hydraulic fracturing
33 treatments."

34 **SECTION 2.** G.S. 113-423.1 reads as rewritten:

35 "**§ 113-423.1. Surface activities.**

36 (a) ~~Agreements on Rights and Obligations of Parties.—The developer or operator and~~
37 ~~the surface owner may enter into a mutually acceptable agreement that sets forth the rights and~~
38 ~~obligations of the parties with respect to the surface activities conducted by the developer or~~
39 ~~operator.~~ Written Consent From Surface Owner Required to Conduct Surface Activities. – If the
40 owner of the surface of the land is not the owner or lessor of the subsurface oil or gas resources
41 underlying the land, no surface operations or disturbances to the surface of the land shall occur
42 without the written consent of the surface owner that approves the operations or disturbances.
43 The following conditions shall apply to this subsection:

44 (1) If the surface owner provides written consent that approves operations or
45 disturbances to the surface of the land, the developer or operator and the
46 surface owner may enter into a mutually acceptable agreement that sets forth
47 the rights and obligations of the parties with respect to operations or
48 disturbances to the surface of the land conducted by the developer or
49 operator.

50 (2) If failure to approve operations or disturbances to the surface of the land by
51 the surface owner would render access to subsurface oil or gas resources

1 underlying the land technically or economically infeasible, this subsection
2 shall not apply, but minimization of intrusion shall still be required pursuant
3 to subsection (b) of this section. In any litigation or arbitration based upon
4 this subdivision, the developer or operator shall bear the burden of proof that
5 a surface owner's failure to approve operations or disturbances to the surface
6 would render access to subsurface oil or gas resources underlying the land
7 technically or economically infeasible. If a developer or operator makes that
8 showing, the surface owner may present rebuttal evidence.

9 (b) **Minimization of Intrusion Required.** – ~~An~~ Subject to the limitations of subdivision
10 (2) of subsection (a) of this section, an oil or gas developer or operator shall conduct oil and gas
11 operations in a manner that accommodates the surface owner by minimizing intrusion upon and
12 damage to the surface of the land. As used in this subsection, "minimizing intrusion upon and
13 damage to the surface" means selecting alternative locations for wells, roads, pipelines, or
14 production facilities, or employing alternative means of operation that prevent, reduce, or
15 mitigate the impacts of the oil and gas operations on the surface, where such alternatives are
16 technologically sound, economically practicable, and reasonably available to the operator. The
17 standard of conduct set forth in this subsection shall not be construed to (i) prevent an operator
18 from entering upon and using that amount of the surface as is reasonable and necessary to
19 explore for, develop, and produce oil and gas and (ii) abrogate or impair a contractual provision
20 binding on the parties that expressly provides for the use of the surface for the conduct of oil
21 and gas operations or that releases the operator from liability for the use of the surface. Failure
22 of an oil or gas developer or operator to comply with the requirements of this subsection shall
23 give rise to a cause of action by the surface owner. Upon a determination by the trier of fact
24 that such failure has occurred, a surface owner may seek compensatory damages and equitable
25 relief. In any litigation or arbitration based upon this subsection, the surface owner shall present
26 evidence that the developer's or operator's use of the surface materially interfered with the
27 surface owner's use of the surface of the land. After such showing, the developer or operator
28 shall bear the burden of proof of showing that it minimized intrusion upon and damage to the
29 surface of the land in accordance with the provisions of this subsection. If a developer or
30 operator makes that showing, the surface owner may present rebuttal evidence. A developer or
31 operator may assert, as an affirmative defense, that it has conducted oil or gas operations in
32 accordance with a regulatory requirement, contractual obligation, or land-use plan provision
33 that is specifically applicable to the alleged intrusion or damage. Nothing in this subsection
34 shall do any of the following:

- 35 (1) Preclude or impair any person from obtaining any and all other remedies
36 allowed by law.
- 37 (2) Prevent a developer or operator and a surface owner from addressing the use
38 of the surface for oil and gas operations in a lease, surface use agreement, or
39 other written contract.
- 40 (3) Establish, alter, impair, or negate the authority of local governments to
41 regulate land use related to oil and gas operations."

42 **SECTION 3.** This act is effective when it becomes law.